



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
 )  
 --- ) ISCR Case No. 18-02397  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esquire, Department Counsel  
For Applicant: *Pro se*

03/29/2019

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding drug involvement and substance misuse. Eligibility for a security clearance is denied.

**Statement of the Case**

On July 18, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a set of interrogatories. On October 31, 2018, Applicant responded to those interrogatories. On November 16, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline H (Drug Involvement and Substance Misuse), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on November 27, 2018. In a notarized statement, dated January 8, 2019, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on February 6, 2019, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on February 13, 2019. His response was due on March 15, 2019. Applicant timely submitted two documents in response to the FORM, and they were admitted without objection. The case was assigned to me on March 26, 2019.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted with limited comments all of the factual allegations pertaining to drug involvement and substance misuse of the SOR (SOR ¶¶ 1.a. through 1.h.). Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 29-year-old employee of a defense contractor. He has been serving as a high energy laser program analyst with his current employer since May 2016. A 2008 high school graduate, Applicant attended several colleges and received college credits over a multi-year period, but did not earn a degree. He has never served with the U.S. military. He has never been granted a security clearance. Applicant has never been married, but he apparently has a one-year-old daughter.

### **Drug Involvement and Substance Misuse**

Applicant was a substance abuser whose substances of choice were marijuana; unspecified opioids;<sup>1</sup> hallucinogens,<sup>2</sup> including lysergic acid diethylamide (LSD) and

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<sup>1</sup> Opioids are a class of drugs that include the illegal drug heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription, such as oxycodone (OxyContin®), hydrocodone (Vicodin®), codeine, morphine, and many others. See <https://www.drugabuse.gov/drugs-abuse/opioids>

<sup>2</sup> Hallucinogens are a diverse group of drugs that alter perception (awareness of surrounding objects and conditions), thoughts, and feelings. They cause hallucinations, or sensations and images that seem real though they are not. See <https://www.drugabuse.gov/drugs-abuse/hallucinogens>

psilocybin mushrooms; stimulants, including cocaine, Adderall®,<sup>3</sup> 3,4-Methyl-enedioxy-methamphetamine (MDMA),<sup>4</sup> a synthetic drug commonly known as Ecstasy; Xanax, a brand name for the drug alprazolam, used to treat anxiety and panic disorders; Klonopin, a sedative used to treat seizures, panic disorder, and anxiety; and codeine cough syrup.<sup>5</sup> Some of those substances are illegal, while others require prescriptions.

Applicant has been smoking or eating marijuana on numerous occasions since July 2006, throughout high school and college, and he continued to do so at least until February 2016. He purchased marijuana from his unnamed associates and unnamed friends. He used marijuana with multiple individuals, in a variety of locations, including his friends' apartments, and his car. His use increased over time from one time per month to up to two marijuana joints per day. Marijuana made him feel hungry and unmotivated, and it helped him forget about issues in his life. Applicant described his attachment to marijuana as an emotional attachment. During his interview with an investigator from the U.S. Office of Personnel Management (OPM) on May 10, 2018, Applicant stated that he did not intend to use marijuana in the future, claiming that his motivation was driven by his family, his daughter, and his maturity level.<sup>6</sup>

Applicant began snorting cocaine out of curiosity in March 2008 when he was in high school, and he continued doing so periodically, characterized by him as "only a handful of times," sometimes after lengthy periods of abstinence, until at least July 2014. He was generally by himself when he used cocaine. He purchased the cocaine that he used. Cocaine made his heart race, and it made him sweaty and paranoid. Because he saw no benefit in the continued use of cocaine, he decided to stop using it. During his OPM interview, Applicant made the same statement regarding future intent, motivation, and maturity level.<sup>7</sup>

Applicant started using LSD and psilocybin mushrooms, also out of curiosity, in September 2008, and he continued using the substances until at least January 2012, claiming that there were sometimes periods of up to six months when he did not use them. He obtained the LSD from friends, or he would harvest the mushrooms from cow feces in

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<sup>3</sup> Adderall® is a prescription medication used to treat attention deficit hyperactivity disorder (ADHD) and narcolepsy. Adderall, a brand name, is a combination of amphetamine and dextroamphetamine, which are central nervous system stimulants, and can be habit-forming. See <https://medicineplus.gov/druginfo/>

<sup>4</sup> 3,4-methylenedioxy-methamphetamine (MDMA) is a synthetic drug that alters mood and perception (awareness of surrounding objects and conditions). It is chemically similar to both stimulants and hallucinogens, producing feelings of increased energy, pleasure, emotional warmth, and distorted sensory and time perception. See <https://www.drugabuse.gov/drugs-abuse/mdma-ecstasy>

<sup>5</sup> Codeine is a prescription opioid drug that treats mild pain and acts as a cough suppressant. Codeine cough syrup's main ingredient is a mild opioid narcotic, making it a target of abuse for people seeking narcotic highs.

<sup>6</sup> Item 5 (Enhanced Subject Interview, dated May 10, 2018), at 5-6; Item 4 (e-QIP, dated July 18, 2017), at 29-30, 36.

<sup>7</sup> Item 5, *supra* note 6, at 6; Item 4, *supra* note 6, at 31-32, 37.

the pasture. During his period of use, he estimated that he used LSD on two occasions and the mushrooms about “a handful of times” or ten times. LSD and the mushrooms made him feel artistic and creative, seeing lots of colors, they slurred his speech, and they made him feel as if he was dreaming while he was actually awake. During his OPM interview, Applicant made the same statement regarding future intent, motivation, and maturity level.<sup>8</sup>

Applicant started using Adderall® in September 2008, and he continued using it “a few times” until March 2015. It helped him focus for tests. The Adderall® was not prescribed for him, and a study partner provided it to him. The substance made him feel uncomfortable, sweaty, and anxious. He was given MDMA/Ecstasy by an unidentified acquaintance, and Applicant used it two times at parties during a one to two week period while he was at a particular university between August and December 2008. During his OPM interview, Applicant made the same statement regarding future intent, motivation, and maturity level.<sup>9</sup>

Applicant started using Xanax recreationally in October 2009, and he continued doing so until at least January 2016, claiming that there were sometimes multi-year periods when he did not use it. Although he claimed it was at one point prescribed for him, he would usually purchase it off the street and would use one pill per day. He estimated that he used it “only a handful of times.” Xanax made him feel less anxious, and it enabled him to forget about his problems. Applicant acknowledged that the drug created relationship problems with his girlfriend. During his OPM interview, Applicant made the same statement regarding future intent, motivation, and maturity level.<sup>10</sup>

Applicant initially admitted that he had experimented with both Xanax and Klonopin on various occasions, described as “a handful of times,” between October 2009 and March 2015. He later amended that period and said it continued until January 2016. Klonopin, like Xanax, is a type of anti-anxiety medication that is classified as a benzodiazepine, used to treat panic attacks and anxiety. Applicant stated during the OPM interview that he was currently prescribed Klonopin, and that he was taking it as prescribed.<sup>11</sup>

Applicant sustained a football injury in November 2004, and as a result, he had surgery, and his spleen was removed. He was prescribed hydrocodone<sup>12</sup> and codeine cough syrup. Eventually, that period of prescribed use of such substances transitioned into recreational use. He purchased and used various opioids, including Oxycodone,<sup>13</sup>

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<sup>8</sup> Item 5, *supra* note 6, at 6-7; Item 4, *supra* note 6, at 32-33, 37.

<sup>9</sup> Item 5, *supra* note 6, at 7; Item 4, *supra* note 6, at 10, 33-34, 38-39.

<sup>10</sup> Item 5, *supra* note 6, at 7; Item 4, *supra* note 6, at 10, 34-35, 38, 40.

<sup>11</sup> Item 5, *supra* note 6, at 7; Item 4, *supra* note 6, at 10, 34-35, 38, 40.

<sup>12</sup> Hydrocodone is a powerful painkiller prescribed for injury-related pain.

<sup>13</sup> Oxycodone is a semi-synthetic opiate used for pain relief.

recreationally from November 2007, and continued doing so until at least January 2016. He used two 30 milligram Oxycodone pills on a daily basis by snorting the drug either in his room or in his car. The daily use continued because efforts to stop taking the drug resulted in his becoming violently sick from withdrawal. Opioids resulted in affecting his speech and causing his pupils to become dilated. Applicant's opioid use initially gave him a feeling of euphoria, but eventually it simply helped him to feel normal.<sup>14</sup>

In July 2015, Applicant woke up in the hospital from an overdose of opioids. During his treatment, he was diagnosed with Opioid Use – Severe.<sup>15</sup> He left treatment after nine days without any prescribed medications and against medical advice because he felt as though he was not being treated properly.<sup>16</sup> Applicant claimed he sought alternate resource support with Narcotics Anonymous (NA) for an unspecified period, as well as Suboxone treatment from a physician.<sup>17</sup>

In December 2018, one month after the SOR was issued, Applicant started seeing a licensed clinical psychologist as part of an addiction program. In addition to the program, Applicant sees the psychologist in his private practice. Applicant has been participating in both group and individual therapy. Through the first three months of the program, Applicant has met all requirements with self-direction and without prompting from clinic staff. He has successfully passed all drug screens, but does continue to have some chronic anxiety. Applicant has consistently been forthright and honest in treatment and in reporting previous drug use, "which demonstrates a good treatment prognosis. He has been counseled about alcohol use and has decreased frequency and amount. Also per his report, [Applicant] has completely discontinued marijuana use as well."<sup>18</sup>

In his e-QIP, Applicant acknowledged his lengthy period of drug involvement and substance misuse:<sup>19</sup>

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<sup>14</sup> Item 5, *supra* note 6, at 6; Item 4, *supra* note 6, at 30-31, 36-37, 40.

<sup>15</sup> The appropriate terminology for the condition under the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM- 5 (2013), is Opioid Use Disorder – Severe, 304.00 (F11.20). Among the diagnostic features of the disorder are "signs and symptoms that reflect compulsive, prolonged self-administration of opioid substances that are used for no legitimate medical purpose or, if another medical condition is present that requires opioid treatment, that are used in doses greatly in excess of the amount needed for that medical condition."

<sup>16</sup> Item 5, *supra* note 6, at 7; Item 4, *supra* note 6, at 41; Item 3 (Answer to the SOR, dated January 8, 2019), at 2.

<sup>17</sup> Item 5, *supra* note 6, at 7; Item 4, *supra* note 6, at 41. Suboxone is a drug that contains buprenorphine, and it is used to reduce symptoms of opiate addiction and withdrawal. See <https://medicineplus.gov/druginfo/>

<sup>18</sup> Letter, dated March 11, 2019, submitted in response to the FORM.

<sup>19</sup> Item 4, *supra* note 6, at 30-35.

I have made mistakes that I am extremely ashamed of, embarrassed of, and even disgusted with for making. Not only am I disgusted with my choices in the past, I seek to right my wrongs and be a truly great contributing member of society. I have made significant and drastic life changes such as: cutting all ties with former associates, . . . and focusing on my life and future, which includes my career and my family. . . . I cannot change my past: I can only change my future.

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”<sup>20</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”<sup>21</sup>

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>22</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of

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<sup>20</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>21</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>22</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.<sup>23</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."<sup>24</sup>

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."<sup>25</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline H, Drug Involvement and Substance Abuse**

The security concern relating to the guideline for Drug Involvement and Substance Abuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules,

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<sup>23</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>24</sup> *Egan*, 484 U.S. at 531.

<sup>25</sup> See Exec. Or. 10865 § 7.

and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Furthermore, on October 25, 2014, the Director of National Intelligence (DNI) issued Memorandum ES 2014-00674, *Adherence to Federal Laws Prohibiting Marijuana Use*, which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines (Reference H and I). An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

The guideline notes several conditions under AG ¶ 25 that could raise security concerns in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder; and
- (e) failure to successfully complete a drug treatment program prescribed by a duly qualified medical or mental health professional.

Applicant admittedly purchased,<sup>26</sup> possessed and used (or misused) marijuana; opioids, including Oxycodone and codeine cough syrup; hallucinogens, including LSD

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<sup>26</sup> Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unalleged conduct,

and psilocybin mushrooms; stimulants, including cocaine, Adderall®, MDMA, Xanax; and Klonopin. Before he left substance abuse treatment for a drug overdose, against medical advice and without prescribed medication, he was diagnosed with Opioid Use Disorder – Severe. AG ¶¶ 25(a), 25(c), 25(d), and 25(e) have been established.

The guideline also includes examples of conditions under AG ¶ 26 that could mitigate security concerns arising from Drug Involvement and Substance Misuse:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶¶ 26(a) and 26(b) minimally apply. AG ¶¶ 26(c) and 26(d) do not apply. Applicant's lengthy history of drug involvement and substance misuse can be analyzed in two different ways: individually or as a combination, regardless of the individual substance. On an individual basis, it would appear that his use of cocaine, LSD, psilocybin mushrooms, Adderall®, and MDMA/Ecstasy were primarily experimentation or of a more limited in frequency and duration. As to those substances, AG ¶ 26(a) may have some application. However, because of the frequency, duration, and relative recency of his use of marijuana, Xanax, Klonopin, and the various opioids, including Oxycodone and codeine cough syrup, AG ¶ 26(a) does not apply. As to AG ¶ 26(b), Applicant has acknowledged his lengthy history of drug involvement and substance misuse with a plethora of substances, and claimed that he has disassociated from his drug-using associates and contacts. However, there is only some relatively recent evidence, commencing after the SOR was issued, that indicates that he has taken some action to overcome his substance abuse problem. In fact, while Applicant eventually sought substance abuse treatment in December 2018, there is no mention of his earlier diagnosis of Opioid Use Disorder –

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such as his purchases and possession of various substances, will be considered only for the five purposes listed above.

Severe, and how that condition is being treated. Recognizing that Applicant's abuse of Oxycodone and codeine cough syrup started sometime after those medications were initially prescribed for him following a severe illness or injury, his continued misuse of those substances removes that misuse from consideration of AG ¶ 26(c).

Finally, there is the absence of clinical records regarding his abuse of opioids and Applicant's failure to fully explain his premature departure from treatment against medical advice, and his failure to furnish documentary evidence pertaining to his purported Suboxone treatment. While Applicant's purported periods of abstinence from illegal and authorized substances is to be encouraged, considering the lengthy period of his overall drug involvement and substance misuse, even accepting Applicant's stated periods of such abstinence, the periods of abstinence are simply too brief to establish confidence that a relapse will not occur. Under the circumstances, Applicant's actions continue to cast doubt on his current reliability, trustworthiness, and good judgment.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>27</sup>

There is some evidence mitigating Applicant's conduct. Applicant is a 29-year-old employee of a defense contractor. He has been serving as a high energy laser program analyst with his current employer since May 2016. A 2008 high school graduate, Applicant received a number of college credits over a multi-year period, but did not earn a degree. He has purportedly been abstinent from those illegal or misused substances over a staggered period.

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<sup>27</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

The disqualifying evidence under the whole-person concept is more substantial. Applicant admittedly purchased, possessed and used, or misused, marijuana; opioids, including Oxycodone and codeine cough syrup; hallucinogens, including LSD and psilocybin mushrooms; stimulants, including cocaine, Adderall®, MDMA, Xanax; and Klonopin – all against the law. Before he left substance abuse treatment in 2015 for a drug overdose, against medical advice and without prescribed medication, he was diagnosed with Opioid Use Disorder – Severe. Although he was treated for the opioid overdose in 2015, it was not until December 2018 – two and one-half years later – that he sought treatment for substance abuse.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his Drug Involvement and Substance Abuse. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a., 1.b., 1.f., and 1.h.:	Against Applicant
Subparagraphs 1.c. through 1.e.:	For Applicant
Subparagraph 1.g.:	For Applicant (included in 1.a.)

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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ROBERT ROBINSON GALES  
Administrative Judge